

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4259 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KAMALABEN M JOSHI

Versus

STATE OF GUJARAT

Appearance:

MR. D.J. BHATT FOR MR VM TRIVEDI for Petitioner
MR. MUKESH PATEL, A.G.P. for respondent No. 1
Respondents Nos. 2 and 3 served.

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 19/12/96

ORAL JUDGEMENT

The petitioner claims revised Family Pension as per the Government Resolution dated 1.1.1972 at Annexure-A to the petition.

2. The petitioner's husband Mohanlal Karunashankar Joshi who was formerly employed as a clerk-cum-accountant with the State of Gujarat and who had worked at the Training Centre, Rajpipla under the Bharuch District

Development Officer had voluntarily retired after having put in 25 years of effective service on 26.2.1971. As per the Rules 5 years' notional service was added and he was entitled to receive pensionary benefits on the basis of 30 years' service. He was accordingly given pensionary benefits after his voluntary retirement on the basis as if he had retired on 26.2.1976. Mohanlal Karunashankar Joshi passed away on 17.6.1971 leaving behind him his widow i.e. the petitioner, one son and three daughters who were all minors at that time. The petitioner was given Rs. 64/- by way of Family Pension. Under the revised Family Pension Scheme which was made effective from 1.6.1971 she claimed minimum of Rs. 200/- payable as Family Pension. However, in view of the fact that under the Resolution dated 1.1.1972, prescribing the revised Family Pension Scheme, a cut off date of 1.6.1971 was laid down, the petitioner could not be given family pension under the said Scheme at the revised rate because her husband had retired before 1.6.1971.

3. The validity of the said Resolution dated 1.1.1972 came to be considered by this court (Coram: R.C. Mankad, J) in KAMLABEN VS. STATE OF GUJARAT reported in 30(2) G.L.R. 1068 and this court after a detailed consideration of the matter held, relying on the decision of the Supreme Court in the case of D.S. NAKARA VS. UNION OF INDIA, AIR 1983 SC 130, that the words "who were in service on 1st June, 1971 or are recruited thereafter" in paragraph 1 of the Resolution, "on or after 1st June, 1971" and "and who has retired on or after 1st June, 1971 and who has died or who may die on or after that date" in paragraph 2 and clause (a) of paragraph 12 of the Resolution dated 1.1.1972, were arbitrary and violative of Article 14 of the Constitution of India and they stand severed and deleted from the said Resolution. Even from the Resolution dated 17.10.1977 the court struck down the offending words "i.e. will be applicable to those who have retired on 1.10.1977 and thereafter" in paragraph 3 of that Resolution on the same ground. Thus, the matter is directly covered by the decision of this court and it is stated at the Bar that this decision has been confirmed in the Letters Patent Appeal by a Division Bench.

4. In this view of the matter, the case of the petitioner is required to be considered in light of the Resolution dated 1.1.1972 as may have been amended from time to time for fixing her revised pension under the Family Pension Scheme. The respondents are, therefore, directed to revise the family pension that may be payable to the petitioner in the light of the Resolution dated

1.1.1972 as may have been amended from time to time in context of the decision of this court in KAMLABEN VS. STATE (supra). This may be done within four weeks from the date of the receipt of this order and whatever arrears are worked out must be paid within four weeks thereafter to the petitioner. Rule is made absolute accordingly with no order as to costs.

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